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Can there be an Ethics for Institutional Agents?

Sean Cordell

At the time of this writing, following the disastrous fire at the Grenfell Tower residential building in London, BBC news reports that the Metropolitan Police has informed affected and nearby residents stating that they may bring charges of corporate manslaughter to ‘the Royal Borough of Kensington and Chelsea, and the Kensington and Chelsea Tenancy Management Organisation’. This is as a result of the Met’s investigations into allegations of gross negligence with respect to fire safety.¹

In this example the three parties are institutional organizations that are doing, or may have failed to do, things which are morally considerable. It is the Metropolitan Police which deliberates over holding two other institutions to account for their allegedly failing in their duties, and the terrible consequences thereof. To the extent that they are in these ways morally responsible and praiseworthy or blameworthy, these institutions – whilst incorporating individual persons – are each themselves a kind of moral agent. Accordingly, similarities and differences between the institution (among other types of social group) and the individual moral agent have figured in various debates over whether, how, or in what sense(s) the institution or corporation can be a moral agent, a nexus of collective responsibility.²

I also consider this type of similarity or dissimilarity, and what this can tell us about the moral agency of institutions. However, I take a slightly different standpoint from many of those debates, for my question arises on the assumption that an institutions can indeed have the status of moral agent. That is: If an institution can be a moral agent in some sense(s), then does it differ from the individual moral agent such that we should judge, morally, each kind of agent in a different way or according to different standards? I argue that whichever way we conceive the institutional moral agent, it mirrors an individual in some specific social role more than it mirrors the individual moral agent or person *per se*. ‘More than’ insofar as the agency of an institution is embedded in a certain kind of role and its normative standards, whereas the moral agency of the individual is not similarly embedded. This difference has implications for the normative status of institutions and the ethical stance we should adopt towards them.

Institutions and their Minimal Moral Agency

It is worth first stipulating the sense of ‘institution’ that will be relevant here. The term can of course meaningfully refer to something as diffuse and incorporeal as ‘the social institution of

Sunday worship'. But I refer to 'the institution' throughout to mean 'the organisation' within a subset of 'Institutions'. As Geoffrey Hodgson has it:

Institutions are systems of established and embedded social rules that structure social interactions. *Organisations* are special institutions that involve (a) criteria to establish their boundaries and to distinguish their members from non-members, (b) principles of sovereignty concerning who is in charge and (c) chains of command delineating responsibilities within the organisation'.³

This also helps distinguish the institutional organisation from other non-institutional groups which can be organisations in some sense. A spontaneously rioting mob may be a kind of ad-hoc or ephemeral organisation insofar as it is a number of individuals organised as one into a rapaciously powerful unit, for example.⁴ However, it is not an institutional organisation in our sense.

Where such an institution exhibits moral agency, it incorporates several individual agents and is thus a type of corporate, group or collective agent. By focussing on the organisational institution as this kind of moral agent, however, I do not mean to exclude other sorts of social groups' status as possible moral agents or morally responsible entities.⁵ Rather, I argue that by virtue of being organised *as* an institution, certain features of the institutional organisation determine certain discrete normative standards, and thus to a significant extent shape its particular identity *qua* moral agent. Nonetheless, the institutional organisation is especially apt for ascriptions of moral agency and responsibility. Introducing the minimal sense of agency I will outline, Tracy Isaacs observes that:

'Organisations [...] have clear role definition, decision procedures, and mechanisms for acting in the world that might be outlined in terms of corporate structures and policies, the specification of corporate interests and the like. [...] Organisations are capable of intentional actions and are for this reason agents, even if in a minimal sense. Therefore, they are legitimate subjects of praise and blame'⁶

As I see it, we ascribe 'minimal' agency to an entity when we sensibly ascribe it some level of responsibility but without having to establish in it such things as a body, mind, conscience, or personhood.⁷ We do exactly this in the case of institutions when, in our best account of some deed or state of affairs, we coherently praise or blame an institution *itself* for decisions it makes, policies it formulates and carries out, cultures and practices it nurtures, or states of affairs it brings about or perpetuates. Institutions can also bear moral obligations to realise some good they can and are expected to bring about, or to improve some bad situation. An

industrial corporation's polluting the river is either the result of its corporate deliberation and thus a corporate intention to pollute, or else it could rightly be held responsible for its negligence in failing to deliberate and act on reasons against polluting.⁸ To the extent it can be taken to task for doing or not doing these things, it is a minimal moral agent.

One could of course defend a conception of an institutional or collective agent more metaphysically laden than the minimal one, a well-known example being Peter French's influential (and contested) corporation as 'moral person'.⁹ As I see it, the minimal conception is sufficient as to illustrate the difference, which I explore, between the institutional moral agent *per se* and the individual moral agent.

The Difference Thesis

Baldly stated, some specific instituted role(s) or function(s) are basic to, and precede, the moral agency of an institution, whereas any particular social role(s) or function(s) is not basic to, and does not precede, the moral agency of an individual. To begin to substantiate this slogan, consider a teacher as one example of an individual role-bearer within an institution (one may choose any other). She is an individual moral agent who came at some point to occupy a teaching role. Her moral agency may be exhibited and developed *qua* teacher, but her status as a moral agent does not require her being a teacher. In fact, if there is any such dependency it is the other way around: we might reasonably suppose that moral agency is a prerequisite for occupying the teacher's role. By contrast, the teaching institution ('school', or 'college', or 'university'), derives its moral agency only from its constitution *as* that institution, where it has the capacity to do morally assessable deeds just by virtue of, and as a result of, incorporation of individuals within certain institutional structures. The institutional moral agent is embedded in and derivative of 'school' in a way that the individual moral agent need not be embedded in or derived from 'teacher'. The statement "moral agent *qua* teacher" makes sense, and so does "school *qua* moral agent". "Moral agent *qua* school", however, fails to make sense in the same way. This discrepancy matters in terms of what we say about the moral conduct of each type of agent. Or so I will suggest. This difference and why it matters needs elaboration and defense. I begin by next looking at an explicitly 'agent-based' virtue-ethical theory which its proponent, Michael Slote, has attempted to scale up to the level of social and political institutions.

Agent Based Ethical Theory and Institutions

Slote has long defended an 'agent-based' variety of normative virtue ethics. 'Agent-basing', as he sometimes also calls it, 'treats the moral or ethical status of acts as entirely derivative from

independent and fundamental *aretaic* ethical characterizations of motives, character traits, of individuals'.¹⁰ In his most substantial defense of this approach,¹¹ Slote broadens its scope to social justice, and seeks to derive a conception of democratic social justice from virtuous motives such as appropriately balanced care for one's political society.¹²

If we think of societies roughly as groups of individuals living under or according to certain institutions, laws, and customs, there is an analogy between the relation the institutions, etc., of a society have to the (membership of the) society and the relation of individual acts to their agents. The laws, customs, and institutions of a given society are, as it were, the actions of that society—they reflect or express the motives (though also the knowledge) of the social group in *something like* the way actions express an agent's motives (and knowledge), though in a more enduring manner that seems appropriate to the way societies typically outlast the individual agents in them. And so just as individualistic agent-basing regards individual acts as morally good if they reflect morally virtuous motivation and wrong if they reflect vicious or deficient motivation, an agent based account of social morality will treat customs, laws and institutions as morally good (positively and admirably just) if they reflect virtuous (enough) motivations on the part of (enough of) those responsible for them as morally bad (or unjust) if they reflect morally bad or deficient motivation.¹³

Slote is here addressing a problem that virtue ethics in general has not shown potential to 'be systematically applied to both individual moral and political questions'.¹⁴ Arguably, political philosophy's distinctive focus is supra-individual concepts and structures and these things' relation to individuals, whilst contemporary virtue ethics starts with the inner lives of individual moral persons.¹⁵ Slote proposes to close this gap by drawing the justice of society and its laws, customs and institutions entirely from the admirable motivations and ethical character of agents. This offers both a counterpart to Slote's individual agent-basing, and a political theory consistent with contemporary virtue ethics more generally. It starts with morally good (bad) aspects of a person's character and from there derives judgments about the rightness (wrongness) of their actions.

Most interesting for our purposes is Slote's suggestion that the agent in agent-based ethics – whose moral motives are the currency of right or wrong action – could be not only the individual person but also a morally motivated group agent at the institutional level of an entire society. Slote himself, on one hand, nods to a conception of this societal agent as an aggregation of actual individuals, when he says that agent-basing can evaluate 'laws, customs and institutions' in terms

of whether they ‘reflect or exhibit or reflect virtuous (enough) motives on behalf of (enough) of those responsible for them.’ On the other hand, Slote wishes to construe such motives in a way that is ‘more enduring’ and ‘appropriate’ to the changes in individuals’ membership of the relevant social group over time. This hints at, or at least allows for, a collectivist understanding of the societal agent, which would posit ‘society’ as a supra-individual collective agent which expresses and ‘acts’ on its own motives. Slote need not make a stand either way on the aggregative/collectivist question, insofar as a society’s institutions are for him ‘analogous’ to individuals’ actions. On another, metaphysically less committed, interpretation he could employ the explanatory notion of the societal quasi-agent, as a kind of conduit or repository of the apparent motives behind those institutions. On a counterfactual version of this approach, for example, the society’s institutions, customs, and so on could be evaluated morally in terms of the motives the society would be displaying in creating and sustaining these, were it a genuine moral agent.

Whichever of these interpretations Slote or we might favour, his proposal for a socially enriched version of agent-basing is put in terms of two sorts of motive-evincing moral agent: the large scale institution ‘society’, and the individual. Perhaps because he wants analogously to hold sub-societal institutions as the societal agent’s ‘actions’ and leave things there, he does not explore the further possibility lurking in his own analysis, of the sub-societal institution itself being a kind of moral agent. The institution ‘Police’, for example, might be morally assessable in Slote’s institutional terms as one of society’s ‘actions’. However, the ‘Metropolitan Police Force’, as in the earlier example, also has its own actions which we can assess morally – whether in Slote’s terms of reflection or exhibition of morally admirable motives, or in others. In what follows next I consider this application of agent-basing to institutions, and what it can tell us more generally about the difference between the individual and the institutional agent previously outlined.

A Problem for Agent-Basing

A fundamental and internal objection to agent-based ethical theory has been that it cannot wholly or satisfactorily do what it is supposed to, namely derive the justice or rightness of actions purely from the basic moral quality of agents’ motives. The objection is that to make sense of the agent’s being well-motivated with respect to effecting justice and rightness, the agent must grasp what just states of affairs consist of. So, if asked to say whether an agent’s action is just or right by virtue of whether it reflects or exhibits virtuous motivation, the objector’s answer is ““yes”, only if such motivation is properly concerned with and directed towards just states of affairs, and “no” if it is

not”. If this is right, then the agent in agent-basing appears not to be basic. The agent appears not to be doing the heavy work – the *groundwork* – in establishing the justice, thus the rightness, of their action, for the agent’s moral motivation is not here prior to the moral concept of rightness or justice. Thus, the theory appears at worst trivially circular and at best undermined in its own defining terms of ‘agent-basing’. The point of agent-basing is to get rightness, or justice, of actions from the moral quality of acting agents’ motives, not the other way around.

Slote recognizes and responds to this kind of objection in the case of the individual agent. He says that a properly virtuous motive, if genuinely held, will have to direct its possessor to look outwards to the world and at the relevant scope of any act which flows from that motive:

If one morally judges a certain course of action or decision by reference to, say, the benevolence of the motives of its agent, one is judging in relation to an inner factor that itself makes reference to and takes account of facts about people in the world. One's inward gaze effectively “doubles back” on the world and allows one [...] to take facts about the world into account in one's attempt to determine what is morally acceptable or best to do.¹⁶

So the relevant scope for the well-motivated individual agent includes states of affairs and relations between people in one’s society. That scope, we can assume, includes certain social norms and obligations prescribed by social roles. Indeed, Slote provides an example of an individual in just such a role. Adapting Sidgwick’s case of the prosecutor who fulfils his duty to prosecute but does so from a motive of malice rather than that duty, he suggests that a ‘morally criticizable’ motive would be manifest if the prosecutor failed to fulfil that duty or attempted to recuse himself, where: ‘one very likely explanation will be that [the prosecutor] lacks real or strong concern for doing his job and playing the contributing social role that that involves’.¹⁷ The prosecutor would not be evincing a virtuous motive if he acted contrary to his role-duty, because in this case, his motivation would not properly take into account what *qua* prosecutor he is supposed to do.

My question now is not so much whether or how successfully Slote defends agent-basing with this response, but rather how it fares when applied to the institutional agent. The point in the example is that obligations attached to offices or roles must inform the deliberation of anyone who is properly virtuously motivated to act well *qua* the relevant office or role.¹⁸ This is so far, so good as an account of individuals’ moral motivation regarding role-obligations. However, the notion of the agent’s ‘doubling back’ – gazing out at the world and incorporating role-external factors into the judgment of their internal motivational states – is differently problematic for the institutional

version of agent-basing. This problem illustrates more generally the key difference between institutional and individual agents discussed so far.

Generalizing the Problem

The individual agent bears obligations given by the prosecutor role which must figure in his morally good motivation when acting *qua* prosecutor. The moral agent ‘acting *qua*’ is important here, because whilst it is conceivable in the individual case, I think it is far less intelligible in the case of institutional agent. Taking on Slote’s behalf a view of individual moral agency which I take to be plausible, the individual in agent-basing is a moral agent by virtue of possessing a certain level of rationality and certain moral capacities. These include the ability to hold moral attitudes and affective states such as benevolence. We can on this view envisage a ‘bare’ moral agent who faces, and is subject to, various things out there in the world, including social institutions and the role-obligations they instantiate. At different points in her life she may or may not come to occupy some social roles and not others, and so be more or less subject to various sets of role obligations, and not others, at different times. On Slote’s view we can also deem her more or less a benevolent, caring or good person *simpliciter* and then, also, judge her benevolence or goodness with respect to these obligations.

So, were this agent to be at some point in her life a prosecutor – which *qua* moral agent or person she might never be – she would, as a moral person, gaze out and properly consider the role-obligations established by the legal institution in which that role operates. Suppose now, in the analogous institutional case, we were to assess a legal institutional agent such as the high court similarly. Thus to decide if the court’s issuing the judgment is exhibiting or reflecting morally admirable motivation, we would need similarly to see whether, in being motivated to act, the institutional agent ‘court’ took into account the relevant factors such as requirements of law, of legal norms and any relevant constitution to which it is subject, and of precedents in the legal system in which it operates, and so on. However, in the case of the institutional legal agent rather than the individual one, how far ‘out in the world’, external to the agent, are these relevant factors? The analogy appears limited straight away by one side of it being ‘legal institution’, where it seems that part of that concept is the instituting of just these relevant factors. Legal duties, practices, structures and duties of offices are factors which do not sit external to this institution in a way that role-obligations can sit external to particular persons who occupy the role. For in the case of the court we appear to have an institution that is nothing if it is not all its legal offices, duties and powers. In this picture the moral agent cannot be individuated first as a person who lives in a world of institutions and their obligations who *qua* moral agent could –

theoretically at least – be abstracted from any particular set of those obligations in the form of some social role. Rather, it is having moral agency – aptitude for praise and blame and powers to do morally better or worse things – that is a consequence of its creation and maintenance as this, legal, institution. Insofar as it is a moral agent it is one constituted *by* its institution: its functions, purposes, and social structures, including the roles it specifies for its individual members.

Objections and Responses

It might be objected that the difference in the difference thesis, even if not entirely false, has so far been greatly overstated. One version of this objection is that the individual moral agent is not discrete from social roles and their obligations in the way, or to the degree, I have claimed she is. Another version, from the other direction, is that the institutional moral agent need not be so institutionally bound: it can be discrete from the institution in which it is established. Either or both ways, if there is such a thing as the institutional moral agent, then we need not worry too much about how it supposedly differs from the individual one in this respect.

Firstly then, it may be objected that the individual moral agent may not be so neatly detachable from normative demands of their social world, including their social roles. Individuals' moral agency is in many – perhaps all – cases lived out, shaped by and manifest *via* many social roles and their obligations. In different cultures and historically, particular social roles have been assigned to individuals more rigidly to individuals than in modern societies. And individuals in modern societies can in fact be strongly mired in some social roles and their obligations, identifying strongly as parent, or professional, and so on.¹⁹ Arguably the occupancy of some other roles is non-voluntary and some role-obligations are non-contractual.²⁰ So, social roles have a great deal to do with individuals' constitution as moral agents. There is, nonetheless, some conceptual possibility of the moral agent's role-independence, which obtains aside from the contingencies of social settings in which agents live. In warning of social structures' 'threat to moral agency',²¹ Alasdair MacIntyre urges that an important feature of human moral agents is that they 'understand their moral identity as to some degree distinct from and independent of their social roles'.²² For MacIntyre, our moral agency is imperilled if we fail to see this. As moral agents we have at least the capacity to scrutinize and question the socially determined norms and obligations to which we are subject in roles, no matter how strongly determined these may be. Regarding the current objection, it is worth adding to this point that one can recognize the actual force of role obligations on individuals within some social setting, but hold that the meta-normative force of any social role, that is, the legitimate abidingness of its obligations, depends on its occupants identifying with that role or endorsing its demands.²³ Commensurate with such a

view, someone may live in a society of strict filial norms, but nevertheless reject the ‘son’ social role and its norms by disowning one’s parent(s). An unjustly incarcerated individual may be literally forced into the position of a prisoner, but they can refuse either to identify as ‘prisoner’ or endorse the prisoner’s role. Even if it could be shown, for example, that individual moral agency will only develop or be fully expressed through individuals’ occupancy of some social role(s) or place in a social melee,²⁴ it would not itself undermine the present point about moral agency in relation to social structures. The possibility of critical reflection on social roles, to the point of repudiation, is there in some degree for the individual by virtue of their capacities as a moral agent.

Note also that the particular type of institution relates strongly to the institution’s agency, in a way that a particular role need not relate to the individual’s moral agency. Even if it were true that the individual requires *a* role or *a* set of roles in order to be moral agent, it would not follow that they need occupy any particular role or set of roles in order to be a moral agent. The prosecutor may not have been a prosecutor, or have been ‘something’ else entirely, but still been a moral agent. By contrast, the court could not have been a moral agent at all were it not for its establishment as a legal institution. Institutional agency is not detachable from its instantiation in *this* or *that* institution.

So far I have claimed that the institution *is* first a type of social melee, incorporating its *own* specific tasks and obligations, before it can be a moral agent. Turning to the second version of the objection, one might question whether the moral agent in the institutional context is so tightly bound up with or constituted by its ‘host’ institution. For even if the moral agent does not pre-exist its institution, could it not survive it? Consider the case of a commercial corporation which comes to have, as it were, a moral life or character of its own that is not wholly defined or constrained by the institutional structures that gave rise to it. Subject to internal deliberation or in response to social and political pressures it might change its ways over time: for example, to become far more environmentally responsible. A shift in its structures, procedures, and policies could be due to its gradual adaptation to external social or economic pressures, or to proactive change through concerted intention of the institutional social group (members, staff, officers, leaders, and so on), or some of both. We can also find examples of an institution more directly and deliberately usurping its putatively constitutive role, purpose(s) and duties – the putative ‘what it is there for’ – and for moral reasons. Suppose that a military unit initiates, en masse, a mutiny on grounds of conscientious refusal to fight an unjust campaign. In both these cases the moral agents seem to have repudiated their institutional constraints in the way that an individual moral agent might conscientiously relinquish their social role or refuse its role-obligations.

It is true that in these examples each institutional agent alters or repudiates some of the features which gave rise to their agency *qua* that type of institution. However, in doing so each of them nevertheless is, or becomes in a sense an ‘institution’ on which their moral agency depends. This point relates to the importance of institutional agents being constituted partly at least by groups of individual persons (partly also by social structures, practices, and so on). However one sees the institutional agent as constituted in this respect – as a single collective entity or an aggregation of individuals – its acting *as* a moral agent is conditional on its coming together – its being instituted – as such. In the preceding example the army unit agent has defied its mission and thus shaken off its defining institutional obligations. However, it does not thereby survive that institution and float free *qua* moral agent. Its continuation *qua* moral agent is contingent on its coming together *qua* agent in the pursuit of some other purpose or goal – ‘instituting’ in the sense just described *qua* ‘mutiny unit’. Put differently, it is hard to discern in that picture a surviving moral agent *simpliciter*: one that endures without some set of purposes, duties or institutional structures. Still missing is any coherent supra-individual agent that could live on without being instituted in some form or other. It would not be too much of a metaphorical stretch to ask rhetorically: ‘does this moral agent go *anywhere* if and when it no longer has an institutional structure of some sort?’²⁵

Institutions as a Subject of Ethics

The difference between institutional and individual moral agents can be underlined by the ways in which we assess, or should assess, each of them and their actions. Sometimes our moral judgment of institutional actions can sometimes sensibly concern whether that institution should continue to exist or have ever existed in the first place, and *a fortiori* whether it should be an agent at all. Another such judgment concerns what purposes this or that institution should or should not fulfil. These types of judgments might on the face of it look structurally similar to a moral judgment that some individual moral agent should repent, change their conduct or reform their character, or even that they might be justifiably subject to the death penalty for certain heinous moral crimes. However, if the difference I have claimed is a plausible one, then one can in some degree always morally assess an individual person’s conduct *qua* moral agent – even if in relation to their institutionally defined social role obligations – where this kind of judgment is not apt for the institutional agent itself. For example, a proper forward-looking moral judgment of a member of a criminal organization might be that *he* should continue being a moral agent – and start being a better one – by not being a member. A proper and similarly directed moral judgment of the criminal organization would be that it should have no agency at all.

For all this, it might be claimed that, in our moral thinking, we should view intuitional agents as something very much like individual ones. If a useful view of institutional moral agency need not be a metaphysically heavy one, then would it not be useful to conceive of institutional and individual agents *as* morally similar agents or quasi-agents with respect to our moral intuitions, theories and practices?

The first point to concede here is that we can and should, morally scrutinize certain conduct of some or any institution from a quiet general moral point of view. Plausibly there are some moral judgments which apply to any individual agent or to any institutional one. We should not want to allow any institutional agent of any kind to perpetuate injustice or carry out murder, for example. And the internal deliberation of an institutional agent itself might properly result in a judgment that it should or should not carry out some act or policy on the basis of some general moral principle(s).

However, even in cases of acts which might be ruled wrong under some moral principle, the moral status of many institutional deeds may itself depend importantly on the kind of institution carrying it out. Suppose that the army unit in our previous example does not mutiny but instead advances on the enemy with heavy, deadly, shelling. Assessing whether in this case the army agent would or would not be committing murder(s) or a war crime, or else a legitimate act of war, would warrant consideration of circumstances and conditions. Moreover, on a standard theory the assessment would include whether this mission was part of a just war and, even if so, whether it accords with principles of just conduct in war, for example. However, where this assessment is to be made in terms of the institutional agent's conduct, the concept and role of 'army' is inseparable from 'conduct'. Particular 'army conduct' is thus ineliminable from such judgment of this particular institutional agent. Moreover, the point in relation to institutional versus individual agents is, once again, that in this assessment there is no assessable supra-individual agent that is discrete from 'army unit', where there is at least the possibility of assessing a similarly situated individual's conduct in relation to 'soldier'. Contrast how we might judge a hospital's engagement in deadly combat. In this case there would, it seems, be some illegitimacy built into the operation from the off. If medical institutions, and hospitals in particular, are moral agents then they *are* 'moral agents with a primary duty to save and protect lives', rather than moral agents *per se* who occupy a medical role, as an individual medic might. Unlike the army, medical institutions as agents do not have special permission and, in certain circumstances, a duty, to engage in large scale deadly combat with military weapons.

The crucial point is not that general or absolute moral principles fail to apply to institutional agents. Rather, it is that their application to institutions may get results different from

those yielded from their application to individuals. For example, an absolutist pacifist, who holds that no intentional killing is ever legitimate or permissible, could concede that the particularity of institutions relates to the moral quality of what each of them does. For, even on the view that killing is always in every situation absolutely wrong, a hospital that launches a deadly attack could in some sense be seen as doing a morally worse thing than an army unit's doing the same. The consistent pacifist could say that in addition to doing something outright wrong, the hospital agent, but not the army unit agent, would be committing the wrongdoing of contravening its special duty and usurping its putative purpose to preserve life. By taking this view, the pacifist would in no way be tacitly exonerating or mitigating any institutional agents' killings by virtue of their possessing special powers or duties to kill. On the contrary, the consistent pacifist's assessment of the army unit's operation may arrive at the conclusion that the establishment and maintenance of military institutions – and thus their agency – is just *itself* morally illegitimate. Here the pacifist strongly holds universal moral principles and apply them consistently. She will be applying them properly to a subject quite different from the individual moral agent, not only censuring this or that – any – moral agent for killing as such, but also saying specifically that we are best rid of *this kind* of institution and its agency altogether. Rid, that is, of any social and political institution that confers legitimacy on killing.

An Ethics for Institutional Agents?

I have said that seeing the institution *qua* moral agent as distinct from an individual agent, in the way I have claimed they are different, has a bearing on our attributions of moral responsibility to institutions and our practical treatment of their actions. How should all of this affect the general moral stance we adopt towards institutions *qua* moral agents? Generally, institutions as social entities and *qua* moral agents stand at the intersection of ethical and legal theory, and social and political philosophy (as a look back at the example of the Grenfell Tower fire might illustrate). Thus, an adequate normative theory of institutions may not be encompassed by just one of these approaches. But if institutions are distinct kinds of moral agents in the way I have claimed, it may not be covered either by combination of several extant theories taken from each approach.

One suggestion already made in this chapter has been that moral interrogation of an institutional conduct will raise the question of whether that conduct does or does not serve this or that institution's function or purposes. A line of morally relevant enquiry might then concern whether or not we should sustain an institution that serves those function or purposes – or whether this institution should serve others instead. Developing this point, the ethical standards we apply to institutions' conduct or existence relates to the concept 'good of a kind' in a way that those we

apply to individual moral agents are not.

This can be shown by comparison, again, with the moral goodness of the individual agent. Earlier, following MacIntyre, I argued that the individual moral agent can adopt a role-independent standpoint which the institutional moral agent cannot similarly adopt. On which MacIntyre says further: ‘the answer that by one’s whole way of life one gives to the question “How is it best for a human being in my circumstances to live?” is not to be equated with one’s goodness at being and doing what this or that role requires’.²⁶ In response, he urges individuals’ cultivation of two general role-transcendent moral virtues: constancy and integrity. What, though, could such role-transcendent virtues look like in the case of the institutional agent?²⁷ There may be features that any and all institutional agents might benefit from as organizations, such as solidarity, cohesion, or efficiency. Moreover, it may be true that a thin moral concept such as ‘justice’ might count as a moral virtue in any institutional context. However, justice in such a context needs specific interpretation, by which what counts as virtuous is ‘contoured’²⁸ by the particularity of the institution in question.

To return to Slote’s agent-basing, notice how the particularity of institutions rubs up against the generality of Slote’s basic moral motivations. For the sake of argument, suppose that we could find a basic morally admirable motive of care or benevolence manifested in legal institutions, in institutions of local or national government, in those of the civil service, in health or medical institutions, or in military institutions, for example. Consistent with what I outlined as the aggregative view, institutional moral motivation could be conceived in terms of common projects and joint commitments of relevant individuals within these institutions, for example.²⁹ For it could be that similar basic moral motives drive several (and enough of) the relevant individuals and that these motives are exhibited in the general institutional context. However, what would it mean for the agent of the ministry of justice, or the UK National Health Service, the charity, or a university faculty to evince benevolence? Whether benevolence is manifest in each case will depend on the specific features, projects and aims this or that institution serves,³⁰ without which we struggle to get a grip on answering and saying what the manifestation of moral motivation should look like in each particular context.

Institutions and the agents they embody, then, characteristically carry out different tasks. Accordingly, they bear some special and particular moral obligations. In inferring the moral agency of institutions or corporations there may be the possibility of overlooking this, in seeing institutional or corporate agents as much like individual moral agents *simpliciter*. There is a danger in doing so which is not one that usually arises in discussions of group or collective agency, such as that of misappropriating responsibility to the collective rather than any

individual.³¹ Nor is it the opposite problem of blaming individuals who are not causally responsible or culpable for collective, corporate acts. Rather, on the contrary, it is in letting institutional agents off the hook of their special obligations. By virtue of their various and integral purposes the university, corporation, senate, army, charity, business or government each embody and comprise special or extra responsibilities that are not, similarly, born essentially by the moral agent *simpliciter*.

As suggested at the start of this chapter, institutions are most usefully conceived as moral ‘agents’ in the sense that they do things. In light of the discussion, we can add that they characteristically do certain things for which they are, as it were, employed. Establishing the correct reasons for and terms of employment would be a distinctive task of an adequate institutional ethics, and this is the case whichever general normative political or moral outlook or theory one might favour. Pushing this line in one direction, insofar as we can evaluate them morally, institutions on this account can be conceived as akin to social or political artifacts which bear certain excellences and defects *qua* that kind of artifact. This has roots in the Aristotelian notion of characteristic activity – *ergon* – or function of a thing, and that of an institution being a kind of social artefact that is created for something. Touching on both these lines of thought, Aristotle claims that

[a]ll associations come into being for the sake of some good - for all men do all their acts with a view to achieving something which, in their view, a good. It is clear therefore that all associations aim at some good³²

Clearly there have been, and there are, venal institutions that will not be aiming at any good at all, except perhaps at a misperceived good, as in a racist organization, or some actual good of those who benefit but at the cost of a great evil, as in a criminal extortion gang. In such cases we should rightly want to eradicate such institutions. Correctly making judgments to that effect is surely a desideratum of institutional ethics. Ascertaining whose perceived good is being served, for which reasons, would be just as important for identifying evil institutions as it would for establishing and maintaining good ones, as would the means to diagnose and fix other less pervasive faults. Note, finally, that a concern of such an ethics would be not only the modification or eradication of existing institutions but also the generation of new moral institutions, by groups of individuals, including ones which resist established injustices and unjust institutions. Insofar as institutions are unlike individual moral persons and more like ‘agents’ in the sense of things to which we put uses, establishing their proper or best uses seems to me to be the crucial task.³³

Swanton, Christine. "Virtue Ethics, Role Ethics, and Business Ethics, in *Working Virtue*, eds. Rebecca L. Walker, and Philip J. Ivanhoe. Oxford: Oxford University Press, 2007.

Ziv, Anita Konzelmann. "Institutional virtue: How Consensus Matters". *Philosophical Studies* 161 (2012): 87-96.

Notes

¹ BBC report accessed 27/07/2017 <http://www.bbc.co.uk/news/uk-40747241> Grenfell

² Philip Pettit, 'Responsibility Incorporated', *Ethics* 117 (2007), 171-201. Larry May, *The Morality of Groups: Collective Responsibility, Group Based harm, and Corporate Rights*. (Notre Dame, IN: University of Notre Dame Press, 1987); Seamus Miller and Makela Pekka "The collectivist approach to moral responsibility". *Metaphilosophy* 36 (2005): 634-651; Jan Narveson, 2001. "Collective responsibility" *The Journal of Ethics* 6 (2001): 179-198; Paul Sheehy, "Blaming them", *Journal of Social Philosophy* 36 (2007): 428-441. Tracy Isaacs, 'Collective Responsibility and Collective Obligation', *Midwest Studies in Philosophy*, XXVIII (2014), 40-57.

³ Geoffrey M. Hodgson, "Institutions and Individuals: Interaction and Evolution", *Organization Studies* 28 (2007), 98.

⁴ Larry May, *The Morality of Groups: Collective Responsibility, Group Based harm, and Corporate Rights*, 64-65.

⁵ See for example Marion Smiley "From Moral Agency to Collective Wrongs: Re-Thinking Collective Moral Responsibility", *Journal of Law and Policy* 19 (2010) 171-202. See also Kenneth Shockley, "Programming Collective Control", *Journal of Social Philosophy* 38 (2007), 442-455 for an argument for collective moral responsibility that does not require agency

⁶ Tracy Isaacs, "Collective Responsibility and Collective Obligation", 42.

⁷ John Hasnas, "Where Is Felix Cohen When we Need Him? Transcendental Nonsense and the Moral Responsibility of Corporations", *Journal of Law and Policy* 19 (2010), 171-202.

⁸ A persuasive argument for the pragmatic indispensability of ascriptions of corporate moral responsibility is in Ronald Dworkin, *Law's Empire* (Cambridge USA, Harvard University Press, 1986), 151 ff.

⁹ Peter French, "The Corporation as a Moral Person", *American Philosophical Quarterly* 16 (1979), 207-15. Kendy M. Hess "'If You Tickle Us....': How Corporations Can Be Moral Agents Without Being Persons", *Journal of Value Inquiry* 47 (2013), 319-335.

¹⁰ Michael Slote, 'Law in Virtue Ethics', *Law and Philosophy* 14 (1995), 91-113, p.92.

¹¹ Michael Slote, *Morals from Motives* (Oxford: Oxford University Press, 2001).

¹² In earlier works, Slote considered a similar model using as the model a motive a concern for self-sufficiency based on the Stoic conception of *autarkeia*. See 'Law in Virtue Ethics' and 'Virtue Ethics and Democratic Values', *Journal of Social Philosophy* 24 (1993), 5-37. What I have to say about the agent based theory of social justice applies to either the balanced caring or the *autarkeia* models.

¹³ Slote, *Morals from Motives*, p. 99.

¹⁴ Slote, Eds. Roger Crisp and Michael Slote, 'Introduction', in *Virtue Ethics* (Oxford: Oxford University Press, 1997), 24. Slote earlier expressed fears that '[t]he best known and recently influential ancient virtue ethicists are, of course, Plato and Aristotle, and both espoused anti-democratic ideals. For that reason virtue ethics has great deal to live down and one may wonder whether, in the light of present day democratic thinking, ancient models can provide a relevant or plausible basis for our understanding of political values' "Virtue", in *A Companion to Contemporary Political Philosophy*, eds. Phillip Pettit and Robert E. Goodin (Oxford: Blackwell, 1993), 645. Karen Stohr has also observed more recently that 'with a few exceptions, virtue ethicists have had relatively little to say about contemporary political issues' "Contemporary Virtue Ethics", *Philosophy Compass* 1 (2006), 27. Both Slote and the neo-Aristotelian virtue ethicist Rosalind Hursthouse reject Alasdair MacIntyre's position as a satisfactory basis for a political virtue ethics: Slote because that position seems 'either unwilling or unable to defend democratic or liberal ideas of justice' (Slote, 'Law in Virtue Ethics', 94 fn5), Hursthouse because 'few if any of us want to follow MacIntyre into authoritarianism' ("After Hume's Justice", *Proceedings of the Aristotelian Society* 91 (1991), 229.

¹⁵ Contemporary political philosophers have had much to say about virtues – ‘civic virtues’ or virtues necessary for living well in a flourishing liberal society. William Galston, for example, has understood ‘the liberal virtues [...] instrumentally, as means to the preservation of liberal societies and institutions’. *Liberal Purposes* (Cambridge: Cambridge University Press, 1991), 220. See also Stephen Macedo, *Liberal Virtues* (Oxford: Oxford University Press, 1991)., David A. Strauss, “The Liberal Virtues”, in *Nomos XXXIV*, and Douglas B. Rasmussen, “Liberalism and Natural End Ethics”, *American Philosophical Quarterly* 27 (1990), 153-161. Characteristic of these theories is their beginning with some conception of the right, from which they derive the value of citizens’ virtues. As Rawls – ever indebted to Kant – has put it: ‘the fundamental moral virtues’ are ‘desires to act on the basic principles of right’. John Rawls. *A Theory of Justice* (revised edition, Oxford: Oxford University Press, 1999), 436.

¹⁶ Slote, *Morals from Motives*, 39.

¹⁷ Slote, *Morals from Motives*, 14.

¹⁸ This is on the assumption that we are looking at institutions and roles or professions of which we morally approve, or that promote or embody some good. See for example, Justin Oakley and Dean Cocking, *Virtue Ethics and Professional Roles* (Cambridge: Cambridge University Press, 2002); Christine Swanton, “Virtue Ethics, Role Ethics, and Business Ethics”, in *Working Virtue*, eds. Rebecca L. Walker and Philip J. Ivanhoe (Oxford, Oxford University Press, 2007); Rosalind Hursthouse, “Two Ways of Doing the Right Thing”, in *Virtue Jurisprudence*, eds. Colin Farrelly and Lawrence B. Solum (Hampshire, UK, Palgrave MacMillan, 2007).

¹⁹ Thanks to Stephanie Collins for this point.

²⁰ Michael O’ Hardimon, “Role obligations”, *Journal of Philosophy* 9 (1994): 333–363.

²¹ Alasdair MacIntyre, “Social Structures and Their Threat to Moral Agency”, in *Ethics and Politics* (Cambridge: Cambridge University Press, 2006), 186-204.

²² Alasdair MacIntyre, ‘Social Structures and Their Threat to Moral Agency’, 195.

²³ Hardimon, “Role Obligations”. See also Stefan Sciaraffa, “Identification, Meaning, and the Normativity of Social Roles”, *European Journal of Philosophy* 19 (2011), 107–128; and Andrew John Simmons, “External Justifications and Institutional Roles”, in *Justification and Legitimacy*. New York, Cambridge University Press, 1996

²⁴ Put most strongly: ‘If we suppose the world of relations, in which [a man] was born and bred, never to have been, then we suppose the very essence of him not to be’. F.H. Bradley, “My Station and its Duties”, in *Ethical Studies* (Oxford: Oxford University Press, 1927), 166.

²⁵ For a defence of group agents which, whilst dependent on deliberative procedures for agency and thus for having moral virtues, do not require goals or formal institutional-organizational structures see Donald Beggs, “The Idea of Group Moral Virtue”, *Journal of Social Philosophy*, 34 (2003), 457- 474.

²⁶ ‘Social Structures and Their Threat to Moral Agency’, p.195.

²⁷ On institutional and collective moral virtues see Michael D. Smith, ‘The Virtuous Organization’, *Journal of Medicine and Philosophy* 7(1982), 31-42; Miranda Fricker, “Can There Be Institutional Virtues?”, in *Oxford Studies in Epistemology, Social Epistemology* eds. Hawthorne and Gendler (Oxford University Press, 2010); Donald Beggs, “The Idea of Group Moral Virtue”; Anita Konzelmann Ziv, “Institutional virtue: How Consensus Matters”. *Philosophical Studies* 161 (2012), 87-96. Sean Cordell, “Group Moral Virtues: No Great Leap Forward with Collectivism”, *Res Publica*, 23 (2017), 43-59.

²⁸ Swanton, “Virtue Ethics, Role Ethics, and Business Ethics”.

²⁹ Margaret Gilbert, *Living Together: Rationality, Sociality, and Obligation* (Lanham: Rowman and Littlefield, 1996), 183.

³⁰ An Aristotelian virtue ethical version of this view of ‘regulative ideals’ of roles is well articulated in Oakley and Cocking, *Virtue Ethics and Professional Roles*.

³¹ See e.g. Jan Narveson, “Collective Responsibility”.

³² Aristotle, *Politics* 1252a1-a7.

³³ Sean Cordell “Virtuous Persons and Social Roles”, *Journal of Social Philosophy* 42 (2011), 272.

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